

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

KEVIN HOWARD, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No. 01-376  
 )  
 ROBERT SNYDER, STAN TAYLOR, )  
 FRANCINE KOBUS, ELIZABETH BURRIS, )  
 JOHN DOE #1, JOHN DOE #2, )  
 ANGELA LASKO, WAYNE MASSEY, )  
 DOREEN WILLIAMS, LESMA JONES, )  
 CHARLES CUNNINGHAM AND )  
 PAUL HOWARD. )  
 )  
 Defendants. )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

On June 6, 2001, plaintiff filed this action under 42 U.S.C. § 1983 against defendants alleging First and Fourteenth Amendment violations for confiscation of some of his personal property including books and legal materials.

Currently before the court is plaintiff's motion for leave to file an amended complaint and motions for default judgment against defendants Howard, Cunningham, Burris, Jones, Taylor, and Lasko. (D.I. 57, 51, 52, 53, 54, 55, 56) Also before the court is defendants' motion to dismiss. (D.I. 47) For the following reasons, the court shall grant plaintiff's motion for leave to file an amended complaint, deny plaintiff's motions for default judgment and deny defendants' motion to dismiss.

## **II. BACKGROUND**

Plaintiff is currently incarcerated in the Delaware Correctional Center. Plaintiff alleges that during a shakedown in April 1999 defendants improperly confiscated his legal materials thereby denying plaintiff access to the courts. A denial of access to legal documents in some cases may constitute a denial of access to the courts. See Zilich v. Lucht, 981 F.2d 694, 695-96 (3d Cir. 1992).

## **III. DISCUSSION**

### **A. Plaintiff's Motion for Leave to File an Amended Complaint and Defendants' Motion to Dismiss**

In response to defendants' motion to dismiss, plaintiff filed a motion for leave to file an amended complaint "to correct the deficiencies and defects defendants have raised in their motion[.]" (D.I. 57) In general, the Federal Rules of Civil Procedure require leave to amend be freely granted. See Fed. R. Civ. P. 15(a).

In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be 'freely given.'

Foman v. Davis, 371 U.S. 178, 182 (1962).

The court finds that leave to amend the complaint is appropriate. Plaintiff subsequently filed his amended complaint

and defendants have been granted an extension of time to respond. (D.I. 69, 70) Thus, defendants will not be prejudiced. Defendants' motion to dismiss addresses only the original complaint. The motion, therefore, is denied as moot.

**B. Plaintiff's Motions for Default Judgment**

Plaintiff has filed a motion for default judgment against defendants Howard, Cunningham, Burris, Jones, Taylor, and Lasko. The court is required to consider the following factors when considering a motion for default judgment: 1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and (6) the meritoriousness of the claim or defense. See Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (1984). In addition, the court must bear in mind "that dismissals with prejudice or defaults are drastic sanctions, termed 'extreme' by the Supreme Court and are to be reserved for comparable cases." Id. at 867-68 (internal citation omitted).

None of the factors listed above weigh in favor of granting plaintiff's motions for default judgment. Defendants have

responded to the complaint, although several days late. The court finds no bad faith on the part of defendants in this short delay. Furthermore, defendants do not have a history of dilatoriness and no prejudice has incurred to plaintiff. Defendants' unintentional delay of a few days does not warrant the extreme sanction of default judgment. For these reasons, plaintiff's motions for default judgment are denied.

#### **IV. CONCLUSION**

Therefore, at Wilmington, this 13th day of February, 2003;

IT IS ORDERED that:

1. Plaintiff's motion for leave to file an amended complaint (D.I. 57) is granted.
2. Plaintiff's motions for default judgment (D.I. 51, 52, 53, 54, 55, 56) are denied.
3. Defendants motion to dismiss (D.I. 47) is denied as moot.

Sue L. Robinson  
United States District Judge